2009

State of Utah v. Jed Ozzie Price : Brief of Appellant

Utah Court of Appeals

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff and Appellee, v. JED OZZIE PRICE, Defendant and Appellant.	)	REPLACEMENT BRIEF OF APPELLANT Appellate Case No. 20090990-SC Trial Court No. 091900457

APPEAL FROM THE SECOND DISTRICT COURT IN AND FOR WEBER COUNTY

JUDGE ERNIE W. JONES

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ABBREVIATIONS

BH - Testimony produced at the bail hearing, conducted on May 13th, 2009 is referred to as BH followed by the page and line number.

PH - Testimony produced at the preliminary hearing, conducted on April 13th, 2009 is referred to as PH followed by the page and line number.

R - References in this brief to the paginated pages of the record on appeal are referred to by the letter R followed by the page number.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to UTAH CODE ANN. § 78A(3)(b) (Supp. 2008).

DETERMINATIVE CONSTITUTIONAL PROVISIONS

The Appellant claims that the Trial Court's denial of his motion to suppress violated his rights under the Fourth Amendment of the United States Constitution and Article 1 § 14 of the Utah Constitution.

STATEMENT OF THE ISSUES ON APPEAL, STANDARD OF REVIEW, AND PRESERVATION AT TRIAL COURT

Issues:

The issues raised in this appeal are as follows:

1. Was the scope of the search warrant violated?
2. Were the Appellant's Fourth Amendment Rights violated when his blood was tested for a controlled substance?
3. Did the Appellant give up his expectation of privacy when his blood sample was taken?
4. Was the evidence validly obtained for THC testing?
5. Was the scope of the search and seizure limited?
6. Was the Trial Court correct by denying the Appellant's motion to suppress the results of the drug-screening test?

Standard of Review:

A trial court's ruling on a motion to suppress is reviewed for correctness, including its application of the law to the facts. See *State v. Tripp*, 227 P. 3d 1251, 1257 (Utah 2010). The trial court's underlying factual findings are reviewed under the clearly erroneous standard. *Id.*

Issue Preservation in Trial Court:

The issues stated above were preserved in the Trial Court by the Appellant's motion to suppress, R 38, memorandum supporting motion to suppress, R 40, supplement to motion to suppress, R 113, motion to reconsider, R 315, memorandum supporting motion to reconsider, R 317, and the Appellant's reply memorandum, R 159. (These papers are contained in the Addendum to this brief as Addendums 1, 2, 3, 4, 5, and 6, respectively.)

STATEMENT OF THE CASE

On September 11th, 2009, the Trial Court, ruling from the bench, denied the Appellant's motion to suppress the toxicology final report completed on September 29, 2008, showing that the Appellant tested positive for Tetrahydrocannabinol (THC), the principle component of marijuana, R 309. In his motion to suppress, the Appellant claims that the search warrant provided that his blood be tested based upon the affidavit for search warrant asking that the Appellant's blood be tested to determine its alcohol level, R 38 and R 40.

The Trial Court acknowledged that the issue presented in this case is one of first impression in Utah and stated that the basis for denying the Appellant's motion to suppress was the "good language" found in the case of *Pharr v. Commonwealth of Virginia*, 646 S.E. 2d 453,

462 (2007), see the Court's ruling, R 309-310 and R 348-351, Addendum 7, at paragraph 20.

STATEMENT OF FACTS

1. That on September 5th, 2008, at 6:56 p.m., officers from the Weber County Sheriff's Office responded to a fatal auto accident that occurred at Plain City, Utah. PH P6 L10-25, PH P7 L1-25, PH P22 L23-25, and PH P23 L1-2.
2. That it was determined that the Appellant failed to yield the right-of-way at an intersection and struck a crossing automobile. PH P11 L13-25.
3. That Mr. Ryan Read, a deputy of the Weber County Sheriff's Office, interviewed the Appellant at the scene and believed he could smell a slight odor of alcohol on the Appellant's breath. PH P9 L22-25 and BH P21 L8-16.
4. Deputy Read conducted no field sobriety tests at the scene, nor did he observe indications of drug use, such as a red or flushed face, pinpoint pupils of the eyes, or red or bloodshot eyes. BH P58 L10-25 and BH P59 L1-15.
5. That as a result, Deputy Read asked the Appellant if he had been drinking and the Appellant responded that he had not consumed alcohol at anytime that day. PH P14 L22-25 and PH P15 L1-2.
6. That the Appellant agreed to submit to a sobriety test, conducted by Deputy Read using his portable breath testing device. PH P10 L3-5.
7. That test results given by the portable Breathalyzer registered .008. PH P21 L8-14.

8. That Deputy Read asked the Appellant to accompany him to the Weber County Sheriff's Office and the Appellant agreed. PH P10 L8-16.

9. That during the drive to the sheriff's office, Deputy Read believed he could smell alcohol on the Appellant's breath. BH P21 L17-24.

10. That when arriving at the sheriff's office, Deputy Read requested that the Appellant submit to a blood draw to determine his blood alcohol level. BH P23 L2-3.

11. That because the Appellant had already submitted to a breath test, he refused to submit to a blood draw. BH P23 L5-13.

12. That the Appellant was placed under arrest for driving with a detectable amount of alcohol in his system. BH P23 L15-18.

13. That Deputy Read prepared a search warrant, attached to the Addendum of this brief as Addendum 8, and an affidavit, attached to the Addendum of this brief as Addendum 9. BH P23 L19-24.

14. That the affidavit, search warrant, and return were admitted in evidence. BH P29 L12-18.

15. That over the strenuous objection of the Appellant, *voir dire* examination of Deputy Read and legal arguments presented by the Appellant, BH P30 L23-25, BH P31-40, the trial court admitted the toxicology final report in evidence. BH P40 L22-23.

16. That pursuant to the search warrant, the Appellant's blood was drawn and a sample thereof sent the Utah State Bureau of Forensic Toxicology. BH P30 L6-9.

17. That the final toxicology report, R 330, attached to the Addendum of this brief as Addendum 10, shows negative for alcohol and positive for THC.

SUMMARY OF ARGUMENT

The Appellant's argument is that because the district court did not authorize the State to test the Appellant's blood for anything other than alcohol content, the scope of the search was violated and the Appellant's Fourth Amendment Rights were violated when the State tested the Appellant's blood for a presence of a controlled substance and the Trial Court erred by denying the Appellant's motion to suppress the results of the drug-screening test.

ARGUMENT

(1) The scope of the search warrant was violated.

The affidavit of Deputy Read is clear. It advises the Court:

> In the City of Ogden, County of Weber, there is now certain property or evidenced described as:
> Blood: Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price blood alcohol level. R 0130.

Because Deputy Read conducted no field sobriety tests at the scene and because he did not observe indications of drug use, such as a red or flushed face, pinpoint pupils of the eyes, or red or bloodshot eyes, his sole observation of the Appellant was the "faint" smell of alcohol on his

breath. BH P59-61.

As a result, there is no room to argue that the warrant only authorized the State to test the Appellant's blood alcohol content.

As stated by the United States Supreme Court in *Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602, 621-22 (1989):

> An essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents. A warrant assures the citizen that the intrusion is authorized by law, and that it is narrowly limited in its objectives and scope.

That a warrant is to be narrowly limited to its objectives and scope was enumerated by the Supreme Court of Utah in *Anderson v. Taylor*, 149 P. 3d 352, 356 (2006) and the above-entitled Court in *State v. Dominguez*, 206 P. 3d 640, 645 (2009).

In this case, the warrant was narrowly limited in its objective and scope: a search of the Appellant's blood for alcohol content.

(2) The Appellant's Fourth Amendment rights were violated when his blood was tested for a controlled substance.

The United States Supreme Court has long recognized that a "compelled intrusion into the body for blood to be analyzed for alcohol content must be deemed a Fourth Amendment search". See *Schmerber v.*

California, 384 U.S. 757, 768 (1966) and *Winston v. Lee*, 470 U.S. 753, 760 (1968).

> It is obvious that this physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable. *The ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested employee's privacy interest. Skinner, Id.* at 616. (Emphasis added.)

The Court continued:

> It is not disputed, however, that chemical analyses of urine, like that of blood, can reveal a host of private medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic. *Skinner, Id.* at 617.

Skinner established that the search for data, other than alcohol, is a *further* invasion of privacy. The warrant in this case did not authorize testing the Appellant's blood for drugs, HIV, DNA information, blood type, or anything other than alcohol.

Testing the seized blood for anything other than alcohol violated the scope of the warrant and was a further invasion of the Appellant's privacy.

(3) The Appellant did not give up his expectation of privacy when his blood sample was taken.

In the case of *Herman v. State,* 128 P. 3d 469, 473 (Nev. 2006), it is expressly stated that, "A person who volunteers DNA information for public use without expressly limiting the scope of his consent has no

expectation of privacy in his DNA profile." Support of this fashion is also given in the case of *State v. McCord*, 562 S.E. 2d 689, 693 (S.C. Ct. App. 2002).

In the above-entitled case, however, the Appellant did not consent to testing after Deputy Read's portable breath tester showed a .008 alcohol reading, and limitations of the blood sample were particularly expressed in the scope of the warrant. It was this particularity in the warrant's scope that satisfied the Appellant's constitutional rights. See *State v. McCord, Id.*

(4) Evidence was not validly obtained for THC testing.

Valid seizure of evidence is dictated by an officer's protocol in order to satisfy a suspect's constitutional rights. In a situation that does not involve consent, whether expressly limited or not, an officer or detective must satisfy the Fourth Amendment requirement that search warrants must describe the things to be seized with sufficient particularity to prevent a general exploratory rummaging in a person's belongings. See *Marron v. United States*, 275 U.S. 192, 196 48 S. Ct. 74, 76 (1927). This requirement of particularly describing things to be seized makes general searches impossible and prevents the seizure of one thing (such as searching the blood for THC) under a warrant describing another (the search of blood for its alcohol level). Applying this requirement to the

above-entitled case, the Appellant's blood was validly taken only for the purpose of measuring his blood alcohol level.

(5) The scope of the search and seizure was limited.

Applying *Marron, Id.*, it was reasonable for the Appellant to expect privacy in all areas other than those specifically itemized in the scope of the search warrant. Therefore, the search of his blood for alcohol content was the only item validly authorized for scientific evaluation.

(6) The results of the drug-screening test should be suppressed.

The Trial Court erred by denying the Appellant's motion that the drug-screening test be suppressed. The basis for the denial was the Trial Court's reliance upon the language in the case of *Pharr, Id.*

The facts of the above-entitled case are clearly distinguishable from the facts in *Pharr, Id.* Mr. Pharr was arrested in June of 2001 in connection with the offense of breaking and entering with intent to commit rape. Detectives asked Mr. Pharr for a buccal swab so they could compare his DNA to any DNA evidence found at the crime scene. Mr. Pharr stood up, opened his mouth, and let the detectives swab the inside of his mouth.

After obtaining the buccal swab from Mr. Pharr, one of the detectives remembered similar circumstances of an unsolved case in

August of 1999. Mr. Pharr's DNA was compared to the DNA evidence from the 1999 unsolved case and there was a match. Thereafter, Mr. Pharr was indicted for the 1999 offense.

A motion was filed to have his buccal swab and all related DNA evidence suppressed on Fourth Amendment grounds, and the Trial Court denied the motion. On appeal, Mr. Pharr conceded that he voluntarily consented to the taking of the buccal swab so that police could compare his DNA profile to any DNA evidence found at the scene of the 2001 case. He claimed, however, that the use, by police, of his DNA profile for comparison to DNA evidence recovered from the victim in an unrelated case constituted an illegal search in violation of the Fourth Amendment. The Virginia Court of Appeals ruled that because Mr. Pharr voluntarily consented to the swab and there were no express limitations placed on his DNA profile, the use by police of his DNA in an unrelated case did not constitute an improper search under the Fourth Amendment.

The "good language" in *Pharr, Id.,* relied upon by the Trial Court in denying the Appellant's motion to suppress, is based upon the conclusion of the Virginia court that constitutional concerns had been satisfied because Mr. Pharr voluntarily consented to a buccal swab from him without expressing any limitation to its use.

In the above-entitled case, however, constitutional concerns have not been satisfied if the express limitations in the warrant issued by the Court on September 5th, 2008, are not honored. The statement "Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price blood alcohol level" in Deputy Read's affidavit for search warrant, Addendum 9, constitutes an express limitation. If that limitation is not recognized, the Appellant's constitutional rights have been violated.

The touchstone of the decision in *Pharr*, *Id.* centers around the concept of "a reasonable expectation of privacy". The issue presented to the appellate court was whether or not Mr. Pharr, who voluntarily provided, without express limitation on its use, a DNA sample to the police during the investigation of a criminal offense, retained a reasonable expectation of privacy in that sample sufficient to prevent the police from using it in their investigation of an unrelated offense. The Virginia court observed that to resolve the question it must determine whether the subjective expectation of privacy is one that society recognizes as reasonable. It determined that society is unwilling to recognize as reasonable the subjective expectation of privacy infringed upon by the government when a DNA sample, validly obtained, without express limitation, from a suspect in one criminal case is used to analyze and

compare the suspect's DNA in an unrelated criminal case.

By comparison, in the above-entitled case the issue is whether or not blood drawn from the Appellant, pursuant to a search warrant that expressly limits testing to determine the alcohol level in the blood, can be used to show the THC level in the blood, without violating the Appellant's Fourth Amendment rights.

The Appellant contends and case law supports that society will recognize that he retained a reasonable expectation of privacy, based upon the express limitation in the search warrant that his blood be tested only for alcohol.

In the process of researching case law, the Appellant's research team found the case of *U.S. v. Carey*, 172 F. 3rd 1268 (10th Cir. 1999), a case with both "good language" and good facts.

The *Carey* case centers around a search warrant allowing officers to search the files on Mr. Carey's computers for "names, telephone numbers, ledger receipts, addresses, and other documentary evidence pertaining to the sale and distribution of controlled substances." In the process of searching the contents, the detectives discovered that one file contained child pornography. At the trial court level, Mr. Carey moved to suppress the computer files containing child pornography and his motion

was denied.

The Tenth Circuit Court of Appeals ruled that the detectives exceeded the scope of the search warrant and that the Trial Court erred by refusing to suppress the child pornography obtained by the illegal search. *Id* at 1276.

(7) Utah's constitution vigorously protects citizens' rights.

In construing the Utah Constitution, the Utah Supreme Court has remarked favorably about the analytical framework employed in *State v. Jewett*, 500 A.2d 233 (Vt. 1985) which suggests the use of four principal sources of analytical material: (1) the history of the state constitution, (2) the textual construction of the provision, (3) a comparison with decisions of other state's courts construing their state constitutional provisions of similar or identical language, and (4) sociological materials. *Id.* at 236. See *State v. Earl*, 716 P.2d 803, 806 (Utah 1986) wherein the Utah Supreme Court states, "We cite with approval the summary of scholarly commentary and analytic technique set forth by the Supreme Court of Vermont in *State v. Jewett*"). The *Jewett* court indicated that these four approaches should not be considered exclusive of any other that an imaginative lawyer might offer, however. *Jewett*, *Id.* at 237 & n.12 and n.14, citing P. Bobbitt, Constitutional Fate – Theory of the Constitution 25

(1982) (describing six types of constitutional argument: the historical, the textual, the doctrinal, the prudential, the structural, and the ethical). According to Bobbitt, the historical argument examines the controversies, attitudes, and decisions of the period during which the constitutional provision at issue was proposed and ratified. *Id.* at 7. The textual argument considers the present sense of the words of the provision. *Id.* Structural arguments are "claims that a particular principle or practical result is implicit in the structures of government and the relationships that are created by the Constitution among citizens and governments." *Id.* The prudential argument advances a particular doctrine according to the practical wisdom of the courts. *Id.* The doctrinal argument "asserts principles derived from precedent." *Id.* Finally, the ethical argument "relies on a characterization of American institutions and the role within them of the American people in attempting to legitimize judicial review of the constitutional provisions." *Id.* at 94.

Looking at the history of the Utah Constitution, the Utah Supreme Court has suggested that interpretation of the Utah Constitution may be greatly influenced by the historical events surrounding the drafting of the constitution. See eg., *Society of Separatists, Inc. v. Whitehead,* 870 P.2d 916, 921 -29 (Utah 1993) (stating that "a page of history is worth a volume of

logic" and examining events surrounding Utah's admission to statehood to interpret state constitutional prohibition of expending public money to support religious exercise).

Unfortunately, no direct legislative history is available concerning the decision to include Article I, section 14 in the Utah Constitution. Nevertheless, the intent of the drafters may be fairly inferred from the historical context in which the provision was included. Members of the 1895 Utah Constitutional Convention understood from first-hand experience the necessity of adopting safeguards against unreasonable search and seizure. Tracey E. Panek, *Search and Seizure Antipolygamy Raids*, 62 Utah Hist. Q. 316, 317 (1994) (hereafter "Panek"). Utah pioneers suffered persecution at the hands of murderous mobs in Ohio and Illinois, fled the extermination order of Missouri's Governor Boggs, and suffered more persecution in the Utah Territory from federal marshals engaged in warrantless raids of their homes in search of polygamy-law offenders. The Desert News recounted the warrantless Utah raids as "outrages," "carried out without even a warrant giving the perpetrators the authority [to search]." *Panek*, at 327 (quoting, *Beret News,* March 10, 1886); see also Paul Wake, *Rights, and Free Government: Do Utahns Remember,* Rev. 661, 671 -91 (1996).

This early Utah problem with searches conducted without proper warrants was noted by the Utah Supreme Court in *State v. DeBooy*, 996 P.2d 546, 552 (Utah 2002) wherein it stated:

> This states' early settlers were themselves no strangers to the abuses of general warrants. Underlying the abuse of the general warrant was the perversion of the prosecutorial function from investigating known crimes to investigating individuals for the purpose of finding criminal behavior. A free society cannot tolerate such a practice.

The late Justice Daniel Stewart also believed that history of the Utah Constitution provided a basis for a heightened expectation of privacy. In his concurring opinion in *State v. Anderson*, 910 P.2d 1229, 1240 (Utah 1996), he indicated that because the framers of the Utah Constitution modified certain provisions in the Bill of Rights before they were placed in the Utah Constitution's Declaration of Rights, and even added certain provisions not found in the federal constitution, the Utah Supreme Court should not be bound to construe Utah constitutional provisions in light of federal law. The preparation of the Utah Constitution, perhaps more than any other state because of the history of federal statutory repression and warrantless searches surrounding the polygamy investigation, included the search and seizure provision desiring to ensure the protection of privacy of its citizens against

the type of repression that they had experienced theretofore. The unique history of the Utah Constitution therefore provides a basis for Utah courts to reach different, more protective decisions than would a federal court construing the Fourth Amendment.

An equally important method of analysis recommended by the Utah Supreme Court is "textual construction of the provision". See *State v. Earl*, *Id.* at 806. On its face, Article I, Section 14 of the Utah Constitution is nearly identical to the Fourth Amendment. The only textual difference between the two constitutional provisions is one of punctuation and grammar. Because of the close textual similarity between the two constitutional provisions, the Utah Supreme Court will not draw a distinction between the constitutional provisions based merely upon a textual analysis. See *State v. Watts*, 750 P.2d 1219, 1221 (Utah 1988).

Notwithstanding the textual similarity of the state and federal provisions, on more than one occasion, the Utah Supreme Court has held that Article I, Section 14 provides a greater expectation of privacy than the Fourth Amendment as interpreted by the United States Supreme Court. For example, in *State v. DeBooy*, *Id.* at 554, the Utah Supreme Court held a traffic checkpoint to be unlawful under Article I, section 14 of the Utah Constitution. The court distinguished a suspicionless roadblock upheld by the

United States Supreme Court in *United States v. Martinez-Fuerte,* 428 U.S. 543 (1976) and stated that Fourth Amendment precedent is persuasive, but not binding, when Utah courts are construing the Utah Constitution, *DeBooy*, *Id.* at 550. The court noted that although the Utah and federal constitutions search and seizure provisions "contain identical language" . . . the court "will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state's citizens." *Id.* at 549. Justice Durham stated that "multi-purpose, general warrant-like intrusions on the privacy of persons using the highways are unacceptable" and therefore violate the Utah Constitution. *Id.* at 554.

Another case in which the Utah Supreme Court decided not to follow the federal standard is *State v. Thompson,* 810 P.2d 415 (Utah 1991). In *Thompson*, the court ruled that defendants have the right to be free from unreasonable searches and seizures of their bank statements. This decision directly contradicted the United States Supreme Court's holding in *United States v. Miller* in which the Court held that the government can seize bank records without a Fourth Amendment violation because a bank depositor has no reasonable expectation of privacy. The Utah Supreme Court disagreed and justified its holding on the grounds that several commentators had heavily criticized *Miller* and other states that had faced the issue had also

rejected the *Miller* holding based upon their state constitutions. *Thompson*, *Id* at 416 – 18.

In sum, despite the similarity of the language between the Fourth Amendment and Article I, section 14, the Utah Constitution has been construed as providing more protection against unreasonable search and seizure to the citizens of Utah than does federal constitution.

CONCLUSION

Based upon the foregoing authorities, coupled with the underlying facts, the Appellant urges that the denial of his motion to suppress by the Trial Court be reversed.

DATED this 5th day of January, 2011.

Thomas R. Blonquist

MAILING CERTIFICATE

The undersigned certifies that on this 5th day of January, 2011, a two copies of the foregoing replacement brief were mailed, postage pre-paid, to:

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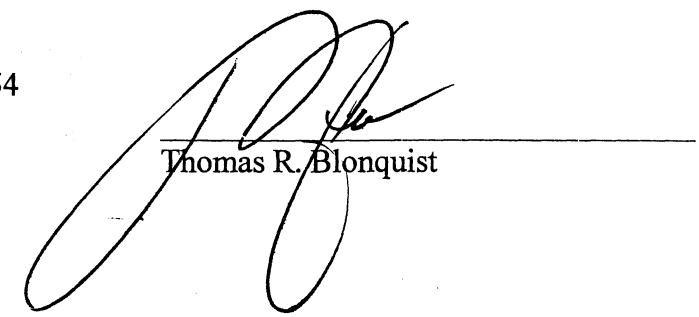

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ADDENDUM 1

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH, Plaintiff,	)	DEFENDANT'S MOTION TO SUPPRESS
v.	)	Case No. 091900457
JED OZZIE PRICE, Defendant.	)	Judge Mark DeCaria

The above-named Defendant, by and through his counsel, hereby moves to suppress the toxicology final report obtained under a search warrant.

This motion is supported by a memorandum of even date.

DATED this 27th day of April, 2009.

Thomas R. Blonquist

ADDENDUM 2

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH, Plaintiff,	)	MEMORANDUM SUPPORTING DEFENDANT'S MOTION TO SUPPRESS
v.	)	Case No. 091900457
JED OZZIE PRICE, Defendant.	)	Judge Mark DeCaria

This memorandum is filed to support the Defendant's motion to suppress the final toxicology report obtained in the above-entitled matter pursuant to a search warrant.

INTRODUCTION

The Defendant contends that the affidavit supporting the search warrant was insufficient to establish probable cause and that the results of the toxicology final report show that there was no probable cause for a search warrant to be issued for a blood draw.

ARGUMENT

Point I- The affidavit supporting the search warrant was insufficient to establish probable cause.

Before issuing a search warrant, a neutral magistrate must review an affidavit containing specific facts sufficient to support a finding of probable cause. See *State v. Babbell*, 770 P. 2d 987, 990 (Utah 1989) and *State v. Droneburg*, 781 P. 2d 1303, 1304 (Utah App. 1989). In addition, the magistrate must not merely ratify the bare conclusions of others. See *Babbell, id* at 990-991 and *Doneburg, id* at 1304.

The magistrate's task is to decide whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of the person supplying information... that there is a fair probability that... evidence of a crime will be found in a particular case. See *Babbell, id* at 1991 and *State v. Weaver*, 817 P. 2d 830, 832-33 (Utah App. 1991).

The Defendant contends that the affidavit did not contain specific facts sufficient to support a finding of probable cause and failed to disclose material facts showing that no probable cause existed.

The affidavit disclosed that the Defendant blew into a portable breath tester, that showed positive for alcohol, however, it did not disclose that the result was a .008-blood alcohol level.

The Fourth Amendment to the United States Constitution guarantee against unreasonable searches and seizures interposes a magistrate between the investigating officer and the person

who is the object of the search and requires the magistrate, before issuing a search warrant, to review the affidavit submitted to determine whether it established probable cause. Conversely, the investigating officer has the duty to disclose to the magistrate all relevant facts. This was not done in the above-entitled matter, therefore, the veracity of the investigating officer compromises the probable cause requirement.

Point II- Results of the toxicology final report show that there was no probable cause for a search warrant to be issued for a blood draw.

The toxicology final report was introduced into evidence at the preliminary hearing held on April 13th, 2009, over the objection of the Defendant. That report shows negative for alcohol.

The affidavit for search warrant provides that

> Blood: Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price's blood alcohol level.

At the preliminary hearing the investigating officer testified that, prior to obtaining the search warrant, he had asked the Defendant if he had been drinking and the Defendant said that he had not consumed alcohol that day.

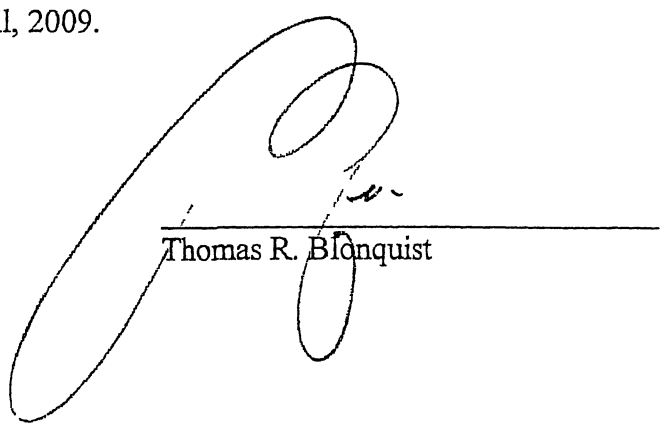
A search warrant was obtained, a blood draw was conducted on the Defendant and the toxicology final report shows negative for alcohol.

This report supports the Defendant's denial of alcohol consumption and supports the Defendant's position that there was no probable cause for the issuance of the search warrant for a blood draw.

COUNCLUSION

Based upon the foregoing, the Defendant submits that his motion to suppress the toxicology final report be granted.

DATED this 27th day of April, 2009.



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ADDENDUM 3

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH,	)	SUPPLEMENT TO MOTION TO SUPPRESS
Plaintiff,	)	
v.	)	Case No. 091900457
JED OZZIE PRICE,	)	Judge Mark DeCaria
Defendant.	)	

This memorandum supplements the Defendant's April 27th, 2009 memorandum supporting his motion to suppress.

Point III- The search warrant specifies that a blood draw be taken to determine the Defendant's blood alcohol level.

Based upon the affidavit for search warrant, signed by Deputy Reed, a search warrant was requested "to determine Jed Ozzie Price's blood alcohol level".

Even though Deputy Reed has been trained in the detection and recognition of drivers who are impaired by drugs, he did not request that the Defendant's blood sample be collected to determine whether or not he had drugs in his body.

Because the search warrant specifies "alcohol level" and makes no mention of drugs, the question before the Court is whether the toxicology report showing THC is admissible.

The Supreme Court of Utah, in the case of *Anderson v. Taylor*, 149 P. 3d 352, 356 (Utah 2006), stands for the proposition that in Utah the language of search warrants must be strictly followed.

In *Anderson*, the question before the Utah Supreme Court was whether, following a search conducted pursuant to a search warrant issued by the Fourth Judicial District Court, the requirements of Rule 40 of Utah Rules of Criminal Procedure were followed. The Court ruled that the requirements of Rule 40 must be strictly followed and concluded that the practice of the Fourth District Court was inconsistent with the statutory requirements.

This position, viewed in conjunction with the language of the search warrant in the above-entitled matter, leads to the conclusion that the search warrant must be strictly interpreted and followed and, because the blood draw was to determine the Defendant's alcohol level only, evidence of drugs in the Defendant's system is inadmissible.

The Utah Court of Appeals, in its April 2009 decision in the case of *State v. Dominguez*, reached the same result. In that case, the Court was asked to consider whether the trial court erred in denying the Defendant's motion to suppress evidence obtained as a result of the search warrant. This case involved the question of whether or not the Second District Court, Ogden Department, complied with provisions of Rule 40.

In *Dominguez*, the Utah Court of Appeals took seriously *Anderson's* mandate that Rule 40 be strictly enforced in Utah and ruled that the provisions of Rule 40 had not been followed and, as a result, the Defendant's Fourth Amendment rights had been violated. Accordingly, the Court reversed the matter and instructed Judge Heffernan to grant the Defendant's motion to suppress.

Of interest, is that in *Dominguez* the arresting officer observed, while speaking to the Defendant, his "red, blood-shot, glassy looking eyes, as well as slurred speech. Nothing of this nature was observed in the above-entitled matter. The only probable cause was that Deputy Reed smelled a "faint" odor of alcohol on the Defendant's breath and observed a reading of .008 on the portable breath tester.

CONCLUSION

Based upon the foregoing, the Defendant submits that his motion to suppress the toxicology final report be granted because:

1. No probable cause existed for a blood draw; and,
2. The toxicology report shows negative for alcohol; and,
3. Strict enforcement of the search warrant must exclude any readings or tests for THC.

DATED this 18th day of May, 2009.

Thomas R. Blonquist

ADDENDUM 4

Thomas R. Blonquist, (0369)
Attorney for Defendant
40 South Sixth East
Salt Lake City, UT 84102
Telephone: (801) 533-0525

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH,	)	MOTION TO RECONSIDER
Plaintiff,	)	
v.	)	Case No. 091900457
JED OZZIE PRICE,	)	Judge Ernie Jones
Defendant.	)	

The above-named Defendant, by and through his attorney of record, hereby moves the that the Court reconsider its ruling from the bench on September 11th, 2009, denying the Defendant's motion to suppress, upon the ground that the case relied upon by the Court in making its decision is factually distinguishable, presents a different issue, and has no precedential value.

This motion is accompanied by a memorandum of even date.

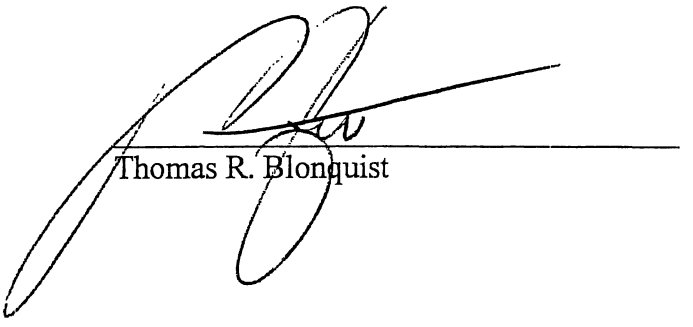
DATED this 16th day of October, 2009.

Thomas R. Blonquist

DELIVERY CERTIFICATE

The undersigned hereby certifies that on this 16th day of October, 2009, copies of the foregoing motion and supporting memorandum was hand-delivered to:

Branden B. Miles
Deputy Weber County Attorney
2380 Washington Blvd., STE 230
Ogden, Utah 84401



Thomas R. Blonquist

ADDENDUM 5

Thomas R. Blonquist, (0369)
Attorney for Defendant
40 South Sixth East
Salt Lake City, UT 84102
Telephone: (801) 533-0525

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH,	)	MEMORANDUM SUPPORTING DEFENDANT'S MOTION TO
Plaintiff,	)	RECONSIDER
v.	)	
	)	Case No. 091900457
JED OZZIE PRICE,	)	
	)	Judge Ernie Jones
Defendant.		

Though not required by Rule 12.(a) of the Utah Rules of Criminal Procedure, this memorandum is prepared and filed by the Defendant based upon the belief that its contents will be of assistance to the Court as it considers and rules upon the Defendant's motion to reconsider, dated October 15th, 2009.

INTRODUCTION

On September 11th, 2009, the Court ruled from the bench denying the Defendant's motion to suppress. In so doing, the Court acknowledged that the issue presented was one of first impression in Utah and stated that the basis for denying the motion was the "good language" found in the case of *Pharr. v. Commonwealth of Virgina*, 646 S.E. 2d 453, 462, (2007).

In the process of researching cases for and against the Defendant's motion to suppress, Defendant's counsel did not find the *Pharr* case and, therefore, was not aware of its holding when the case was referred to by the Court on September 11th, 2009. Having now studied that case, the Defendant has filed a motion to reconsider on the ground that the holding in *Pharr* has no probative value in the above-entitled matter, because it is factually distinguishable, it presents a different issue, it has no precedential value, and otherwise does not support the Court's denial of the Defendant's motion to suppress.

LEGAL BASIS

The legal basis for the Defendant's motion to reconsider is set forth by the Utah Supreme Court rulings in *Bennion v. Hansen,* 699 P.2d 757, 760 (Utah 1985), and *Ron Shepherd Insurance, Inc. v. Shields,* 882 P.2d 650, 654 (Utah 1994), that allow a Court to reconsider a ruling anytime prior to signing the order.

The motion is timely because the order denying the Defendant's motion to suppress has not been signed.

FACTS

The facts relevant to the Defendant's motion to suppress are not in despite. They are:

1. That on September 5th, 2008, officers from the Weber County Sheriff's Office responded to a fatal auto accident that occurred at Plain City, Utah.
2. That it was determined that the Defendant failed to yield the right-of-way at an intersection and struck a crossing automobile.

3. That Deputy Ryan Read, a deputy of the Weber County Sheriff's Office, interviewed the Defendant at the scene and believed he could smell a slight odor of alcohol on the Defendant's breath.

4. That as a result, Deputy Read asked the Defendant if he had been drinking and the Defendant responded that he had not consumed alcohol at anytime that day.

5. That the Defendant agreed to submit to a sobriety test, conducted by Deputy Read using his portable breath testing device.

6. That test results given by the portable Breathalyzer registered .008.

7. That Deputy Read asked the Defendant to accompany him to the Weber County Sheriff's Office and the Defendant agreed.

8. That during the drive to the Sheriff's Office, Deputy Read believed he could smell alcohol on the Defendant's breath.

9. That when arriving at the Sheriff's Office, Deputy Read requested that the Defendant submit to a blood draw to determine his blood alcohol level.

10. That because the Defendant had already submitted to a breath test, he refused submit to a blood draw.

11. That the Defendant was placed under arrest for driving with a detectable amount of alcohol in his system.

12. That Deputy Read prepared a search warrant, attached hereto as Exhibit A, and an affidavit, attached hereto as Exhibit B.

13. That said search warrant is limited in scope to testing the Defendant's blood for alcohol content.

14. That pursuant to the search warrant, the Defendant's blood was drawn and a sample thereof sent the Utah State Bureau of Forensic Toxicology.

15. That the final toxicology report, attached hereto as Exhibit C, shows negative for alcohol and positive for THC.

ARGUMENT

Point I- The facts are distinguishable.

The facts of the above-entitled case are clearly distinguishable from the facts in *Pharr, Id.* In *Pharr*, Mr. Pharr was arrested in June of 2001 in connection with the offense of breaking and entering with intent to commit rape. Detectives asked Mr. Pharr for a buccal swab from him so that they could compare his DNA to any DNA evidence found at the crime scene. Mr. Pharr stood up, opened his mouth, and let the detectives swab the inside of his mouth.

After obtaining the buccal swab from Mr. Pharr, one of the detectives remembered similar circumstances of an unsolved case in August of 1999. Mr. Pharr's DNA was compared to the DNA evidence from the 1999 unsolved case and there was a match. Thereafter, Mr. Pharr was indicted for the 1999 offenses.

A motion was filed to have his buccal swab and all related DNA evidence suppressed on Fourth Amendment grounds, and the trial court denied the motion. On appeal, Mr. Pharr conceded that he voluntarily consented to the taking of the buccal swab so that police could

compare his DNA profile to any DNA evidence found at the scene of the 2001 case. He claimed, however, that the use, by police, of his DNA profile for comparison to DNA evidence recovered from the victim in an unrelated case constituted an illegal search in violation of the Fourth Amendment.

The Virginia Court of Appeals ruled that because Mr. Pharr voluntarily consented to the swab and that there were no express limitations placed on his DNA profile, the use by police of his DNA in an unrelated case did not constitute an improper search under the Fourth Amendment.

The "good language" in *Pharr, Id.,* relied upon by the Court in its bench ruling, is based upon the conclusion of the Virginia court that constitutional concerns had been satisfied because Mr. Pharr voluntarily consented to a buccal swab from him without expressing any limitation to its use.

In the above-entitled case, constitutional concerns have not been satisfied if the express limitations in the warrant issued by the Court on September 5th, 2008, are not honored. The statement "Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price blood alcohol level" in the affidavit for search warrant, Exhibit B, constitutes an express limitation. If that limitation is not recognized by the Court, the Defendant's constitutional rights have been violated.

Point II- The issue in *Pharr* differs from the issue in the above-entitled case.

The touchstone of the decision in *Pharr, Id.* centers around the concept of "a reasonable

expectation of privacy". The issue presented to the appellate court was whether or not Mr. Pharr, who voluntarily provided, without express limitation on its use, a DNA sample to the police during the investigation of a criminal offense, retained a reasonable expectation of privacy in that sample sufficient to prevent the police from using it in their investigation of an unrelated offense. The court observed that to resolve the question it must determine whether the subjective expectation of privacy is one that society recognizes as reasonable. It determined that society is unwilling to recognize as reasonable the subjective expectation of privacy infringed upon by the government when a DNA sample, validly obtained, without express limitation, from a suspect in one criminal case is used to analyze and compare the suspect's DNA in an unrelated criminal case.

By comparison, in the above-entitled case the issue is whether or not blood drawn from the Defendant, pursuant to a search warrant that expressly limits testing to determine the alcohol level in the blood, can be used to show the THC level in the blood without violating the Defendant's Fourth Amendment rights.

The Defendant contends and case law supports that society will recognize that he retained a reasonable expectation of privacy, based upon the express limitation in the search warrant that his blood be tested only for alcohol.

<u>Point III-</u> The Defendant never gave up his expectation of privacy when his blood sample was taken.

In the case of *Herman v. State,* 128 P. 3d 469, 473 (Nev. 2006), it expressly states "A

person who volunteers DNA information for public use without expressly limiting the scope of his consent has no expectation of privacy in his DNA profile." Support of this fashion is also given in the case of *State v. McCord*, 562 S.E. 2d 689, 693 (S.C. Ct. App. 2002).

In the above-entitled case, however, the Defendant did not consent to testing after Deputy Read's portable breath tester showed a .008 alcohol reading, and limitations of the sample were particularly expressed in the scope of the warrant. It was this particularity in the warrant's scope that satisfied the Defendant's constitutional rights. See *State v. McCord, Id.*

Point IV- The evidence was not validly obtained for THC testing.

Valid seizure of evidence is dictated by an officer's protocol in order to satisfy a suspect's constitutional rights. In a situation that does not involve consent, whether expressly limited or not, an officer or detective must satisfy the Fourth Amendment requirement that search warrants must describe the things to be seized with sufficient particularity to prevent a general exploratory rummaging in a person's belongings. See *Marron v. United States*, 275 U.S. 192, 196 48 S. Ct. 74, 76 (1927). This requirement of particularly describing things to be seized makes general searches impossible and prevents the seizure of one thing (such as searching the blood for THC) under a warrant describing another (the search of blood for its alcohol level). Applying this to the above-entitled case, the Defendant's blood was validly taken only for the purpose of measuring his blood alcohol level.

Point V- Express limitation dictated the scope of the search and seizure.

Applying *Marron, Id.* case, it was reasonable for the Defendant to expect privacy in all

areas other than those specifically itemized in the scope if the search warrant. Therefore, the search of his blood for alcohol content was the only item validly authorized for scientific evaluation.

Point IV- A case with both "good language" and good facts.

In the process of researching case law for this memorandum, the Defendant's research team found the case of *U.S. v. Carey*, 172 F. 3rd 128 (10th Cir. 1999), a case with both "good language" and good facts. The entire decision is attached hereto as Exhibit D.

The *Carey* case centers around a search warrant allowing officers to search the files on Mr. Carey's computers for "names, telephone numbers, ledger receipts, addresses, and other documentary evidence pertaining to the sale and distribution of controlled substances." In the process of searching the contents, the detectives discovered that one file contained child pornography. At the trial court level, Mr. Carey moved to suppress the computer files containing child pornography and his motion was denied.

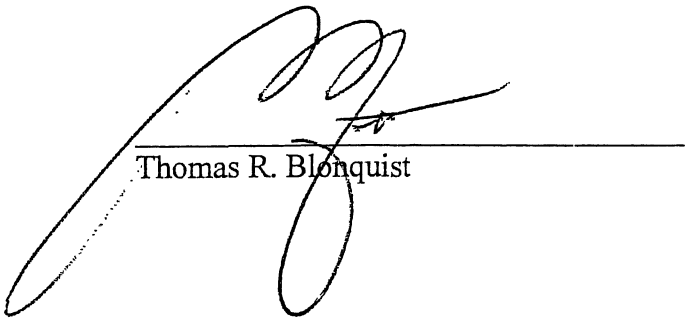
The appellate court ruled that the detectives exceeded the scope of the search warrant and that the trial court erred by refusing to suppress the child pornography obtained by the illegal search. The language that supports the Defendant's motion to suppress is highlighted in yellow on Exhibit D.

CONCLUSION

Due to the facts that there was no consent given for a search of the blood for THC, that there was an express limitation provided by the scope of the search warrant prohibiting the

search of the seized blood for anything other than alcohol, and that the Defendant's Fourth Amendment rights were infringed upon by a general search outside the express limitation of said warrant, the Court should reconsider its September, 11th, 2009, bench ruling and grant, rather than deny, the Defendant's motion to suppress.

DATED this 16th day of October, 2009.



Thomas R. Blonquist

ADDENDUM 6

Thomas R. Blonquist, (0369)
Attorney for Defendant
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Salt Lake City, UT 84102
Telephone: (801) 533-0525

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR

WEBER COUNTY, STATE OF UTAH, OGDEN DEPARTMENT

STATE OF UTAH,	)	REPLY MEMORANDUM
Plaintiff,	)	
v.	)	
	)	Case No. 091900457
	)	
JED OZZIE PRICE,		
	)	Judge Mark DeCaria
Defendant.		

This memorandum is filed to rebut matters raised in the State's response to Defendant's supplement to motion to suppress.

INTRODUCTION

This reply has been prepared and filed because in its memorandum, dated May 28th, 2009, the State, by and through its attorney of record, relies upon *State of Wisconsin v. Sanders*, an unpublished opinion that has no precedential value and may not be cited, except in limited instances.

The thrust of this reply is that 1] because the district court did not authorize the State to test the Defendant's blood for anything other than alcohol content, the scope of the search was

violated; 2] the State violated the Fourth Amendment of the United States Constitution when it tested the Defendant's blood for a presence of a controlled substance; and 3] the results of the drug screening test should be suppressed.

ARGUMENT

Point I-The warrant called for a blood test for alcohol.

The affidavit of Deputy Ryan Read was clear. It advised the Court:

> In the City of Ogden, County of Weber, there is now certain property or evidenced described as:
> Blood: Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price blood alcohol level.

Deputy Read conducted no field sobriety tests at the scene, nor did he observe indications of drug use, such as a red or flushed face, pinpoint pupils of the eyes, or red or bloodshot eyes. The sole observation of the Defendant was the "faint" smell of alcohol on his breath.

As a result, there is no room to argue that the warrant only authorized the State to test the Defendant's blood alcohol content.

As stated by the United States Supreme Court in *Skinner v. Railway Labor Executives' Ass'n,* 489 U.S. 602, 621-22 (1989):

> An essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search or seizure that such intrusions are not the random or arbitrary acts of government agents. A warrant assures the citizen that the intrusion is authorized by law, and that it is narrowly limited in its objectives and scope.

That a warrant is to be narrowly limited to its objectives and scope was recently

enumerated by the Supreme Court of Utah in *Anderson v. Taylor*, 149 P. 3d 352, 356 (2006) and the Utah Court of Appeals in *State v. Dominguez*, _____ (2009).

In the above-entitled matter, the warrant was narrowly limited in its objectives and scope: a search of the Defendant's blood for Alcohol content.

Point II- Blood to be analyzed for alcohol content is a Fourth Amendment search.

The United States Supreme Court has long recognized that a "compelled intrusion into the body for blood to be analyzed for alcohol content must be deemed a Fourth Amendment search. See *Schmerber v. California*, 384 U.S. 757, 768 (1966) and *Winston v. Lee*, 470 U.S. 753, 760 (1968).

> It is obvious that this physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable. *The ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested employee's privacy interest. Skinner, Id.* at 616. (Emphasis added.)

The Court continued:

> It is not disputed, however, that chemical analyses of urine, like that of blood, can reveal a host of private medical facts about an employee, including whether he or she is epileptic, pregnant, or diabetic. *Skinner, Id.* at 617.

Skinner established that the search for data, other than alcohol, is *further* invasion of privacy. The warrant in the above-entitled case did not authorize testing the Defendant's blood for drugs, HIV, or other DNA information, blood type, or anything other than alcohol.

Testing the seized blood for anything other than alcohol violated the scope of the warrant

and was a further invasion of the Defendant's privacy.

CONCLUSION

Applying the facts developed at the preliminary and bail hearings to the United States Supreme Court, the Utah Supreme Court, and the Utah Court of Appeals cases cited hereinabove, the Defendant urges that the Court rule that

A. No probable cause existed for the issuance of a search warrant for a blood draw; and,

B. Results of the toxicology final report be suppressed; and,

C. The search warrant is narrowly limited to its objectives and scope; and,

D. Testing seized blood for anything other than alcohol violated the scope of the warrant; and,

E. Testing for drugs violated the Defendant's privacy and his Fourth Amendment rights.

(To assist the Court in its deliberations, pertinent portions of all referred to United States Supreme Court decisions accompany this reply memorandum.)

Respectfully submitted.

DATED this _____ day of June, 2009.

Thomas R. Blonquist

ADDENDUM 7

IN THE SECOND DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. JED OZZIE PRICE, Defendant.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE COURT ON DEFENDANT'S MOTION TO SUPPRESS CASE NO. 091900457 NOV 13 2009 Judge Ernie W. Jones

This matter came before the Court on Defendant's Motion to Suppress. Briefs were submitted and oral argument was heard on September 11, 2009. The Defendant presents two issues in his motion to suppress the blood results. The first issue to be resolved is whether there was sufficient probable cause for the blood draw warrant and the second is whether, having drawn the blood, the State was restricted in testing the blood for any substances other than alcohol. Having reviewed the affidavit, reviewed the testimony given at the preliminary hearing and bail hearing, and listening to oral arguments, the Court makes the following findings of fact:

FINDINGS OF FACT

1. The police were called to a fatal accident where the Defendant is alleged to have failed to yield the right of way by running a yield sign striking another vehicle on the driver's side, killing sixteen-year-old Chelsea Locher. It is not unusual or unreasonable that the Police would investigate whether drugs or alcohol are present and a possible factor in the accident.
2. The initial accident happened at approximately 6:56p.m..
3. Upon contact with the Defendant, Officer Read smelled alcohol on the Defendant's breath and decided to administer a Portable Breath Test on scene. The test showed positive for alcohol.

4. Officer Read was aware that Defendant was an alcohol-restricted driver.
5. Initially, the Defendant agreed to be transported to the Weber County Sheriff's Office for further testing, however, when they arrived the Defendant refused to submit to further testing so Deputy Read prepared a search warrant affidavit to take a sample of the Defendant's blood.
6. Utah law allows for a suspect's refusal to submit to chemical testing to be used in consideration of whether the person is operating under the influence of or has in his or her body, alcohol or drugs or both. UTAH CODE ANN. § 41-6a-524.
7. Giving the issuing judge the appropriate deference, the officer adequately stated probable cause for the issuance of the search warrant.
8. Even when the Court considers the affidavit with the Defendant's complained of parts redacted, the Court still finds that probable cause exists. Thus, the Court finds that the alleged inaccuracies are immaterial to the finding of probable cause.
9. There is no evidence that the issuing judge wholly abandoned his neutral and detached role.
10. There was no effort or intention to mislead or put false information into the affidavit.
11. The warrant stated with reasonable specificity the place to be search and the person or thing to be seized.
12. The officer acted reasonably obtaining the search warrant and in good faith reliance on the signed warrant.
13. The search warrant was executed at 10:23p.m. by Utah Highway Patrol Trooper Randy Linke.
14. The search warrant states as its express object to seize as a sample of the Defendant's blood, but it does not contain language limiting the laboratory testing to be done on it.
15. Once seized, the Defendant had no control or right to control the blood sample and it was sent to the Utah State Crime Lab for analysis.
16. The Defendant could not reasonably expect a return of the blood sample to him.
17. At the crime lab, testing was performed for alcohol and illegal controlled substances such as cocaine, marijuana, heroin, and methamphetamine.
18. The analysis revealed the presence of THC in the Defendant's blood.

19. As part of the blood draw, the Defendant was not required to submit more blood or do anything extra for the testing for illegal controlled substances than would have been required for the testing of alcohol alone.
20. Although there is no Utah case exactly on point, the case of *Pharr v. Virginia*, 646 S.E.2d 453 (2007) contains language that is significant to this case. In that case, the court determined that once blood has been obtained through a valid warrant, the scientific analysis of that sample does not constitute a search. ~~The Court is also persuaded by the reasoning of *Wisconsin v. Sanders*, which was cited by the State and incorporates it.~~
21. As with any other piece of physical evidence, once seized, a blood sample can be subjected to a battery of scientific testing.
22. The Court finds that the testing done by the state lab in this case was limited to the object of the legitimate investigation, which was to determine the cause of the accident and whether the Defendant may have been impaired by substances that do not readily exhibit physiological signs.
23. The Defendant's blood was not submitted for DNA testing or even for legal, controlled substances that would have revealed any sort of private medical facts about the Defendant unrelated to the investigation in this case.

CONCLUSIONS OF LAW

1. There was sufficient probable cause to support the issuance of the search warrant.
2. The blood sample was lawfully taken from the Defendant.
3. The police acted in good faith reliance upon the valid search warrant.
4. Once the blood sample was lawfully taken from the Defendant, the Defendant lost any reasonable expectation of privacy in the blood insofar as testing for intoxicants-whether alcohol or drug-related.
5. The testing of this blood for alcohol and illegal, controlled substances was reasonable and justifiable given the circumstances of this case when balance against the compelling government interest in determining the causation of fatal accidents.
6. The Court incorporates the reasoning set for in the State's Response to Defendant's Motion to Suppress and the State's Response to Defendant's Supplement to Motion to Suppress.

ORDER

Based on the foregoing facts and conclusions of law, the Defendant's Motion to Suppress is DENIED.

Dated this 12 day of October, 2009

Ernie W. Jones
District Court Judge

Prepared by:

Branden B. Miles
Deputy Weber County Attorney

Approved as to form by:

Thomas R. Blonquist
Counsel for Defendant

ADDENDUM 8

SLAW 1023

Jed Ozzie Price
4-28-82
Dep Ryan Read
778-6600

SECOND DISTRICT COURT

2ND DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

2008 SEP 15 P 2:41

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF UTAH:

Proof by affidavit under oath having been made this day before me by Deputy Ryan Read, I am satisfied that there is a probable cause to believe that:

On the person of:

Jed Ozzie Price: Jed is a 26 year old male (4-28-82) who is 6'1" and 180 lbs. He has hazel eyes and brown hair. Jed is currently wearing blue jeans and a blue shirt. Jed was identified by him giving his name and date of birth which were both verified through the State Drivers Licence screen.

In the City OF OGDEN, County of WEBER, State of UTAH, there is now being possessed or concealed certain property or evidence described as:

Which evidence is:

Blood.

YOU ARE THEREFORE COMMANDED

At anytime, day or night.

To make a search of the above named or described person(s), premise(s) and vehicle(s) for the herein above described person, property or evidence, and if you find the same, or any part thereof, to bring it forthwith before me at the, County of WEBER, State of UTAH, or retain such property in your custody subject to the order of this court.

SUBSCRIBED AND SWORN TO BEFORE ME

this 5th day of September, 20 08.

[redacted]DGE

ADDENDUM 9

2nd DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

SECOND DISTRICT COURT
2008 SEP 15 P 2:41

AFFIDAVIT FOR SEARCH WARRANT

The undersigned being first duly sworn, deposes and says:

That the affiant has reason to believe that:

On the person of:

Jed Ozzie Price: Jed is a 26 year old male (4-28-82) who is 6'1" and 180 lbs. He has hazel eyes and brown hair. Jed is currently wearing blue jeans and a blue shirt. Jed was identified by him giving his name and date of birth which were both verified through the State Drivers Licence screen.

Jed PL

That on the premise known as: ~~Tad~~ is currently located at the Weber County Sheriffs Department.

In the City of Ogden, County of Weber, there is now certain property or evidence described as:

Blood: Your Affiant is asking that a blood sample be collected for testing to determine Jed Ozzie Price blood alcohol level.

That said property or evidence:

- Has been used to commit or conceal a public offense.
- Will be used to commit or conceal a public offense.
- Is evidence of illegal conduct.

The facts establishing the grounds for issuance of a search warrant are:

Your Affiant, Ryan Read is a Deputy with the Weber County Sheriffs Office and has been employed as a Deputy Sheriff for the past twelve years. Affiant is currently assigned as a DUI Enforcement Deputy. Your Affiant graduated from the Utah Police Officer Standards and Training Academy in 1996. Your Affiant has been trained in the detection and recognition of Drivers who are impaired by either drugs or alcohol and Standardized Field Sobriety tests. Your Affiant is currently certified by the State of Utah to operate an intoxilizer. Affiant has investigated over fifty DUI cases and has assisted other Deputies with many more. Your Affiant has receive training and has personal knowledge through his experience of the use of drugs and alcohol and knows how these things affect drivers. Affiant also understands how to detect if drivers are impaired by drugs and alcohol. Affiant has received training and has personally written and executed over one hundred search warrants. Your Affiant has received three distinguished service awards from the Weber County Sheriffs Office and numerous excellent work awards. Affiant was named the Utah Narcotic Officer of the Year in 2001.

Your Affiant was dispatched to 2050 n 5900 w on a motor vehicle accident. Upon my arrival your Affiant learned that a white truck being driven by Jed ~~brown~~ was traveling north bound on 5900 w and went through the intersection with 2050 n without yielding and struck a car on the drivers side. The intersection does have a yield sign for north bound traffic. A passenger in the car that was struck was killed in this accident.

A check of Jed's Drivers licence status showed that Jed's DL is suspended for one year and he is an alcohol restricted driver. When I spoke to Jed about his licence status I could smell a slight odor of an alcohol beverage coming from his breath. I asked Jed if he had been drinking. Jed denied having anything to drink. I had Jed blow into a portable breath tester which did show positive for alcohol. I asked Jed if he would come to the Sheriffs Office so we could do a blood test. Jed agreed to come with me. Jed was not handcuffed.

While driving to the Sheriffs Office when ever Jed would talk to me I could again smell alcohol on his breath.

At the Sheriffs Office your Affiant read the DUI Admonitions to Jed and requested he take a blood and breath test. Jed refused to submit to either test.

Jed was then placed under arrest for driving with a detectable amount of alcohol in his system.

WHEREFORE, the affiant prays that the search warrant be issued for the seizure of said items at [illegible] due to the following reasons:

Your affiant has Jed Price in custody right now and your affiant fears that if the blood evidence is not obtained right now, the evidence will be absorbed by the national course of the human body making it difficult to collect the detectable amount of evidence of alcohol in the blood.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME this 8th day of SEPTEMBER, 20 08.

JUDGE 9:47 p.m.

IN The 2nd DISTRICT COURT,
IN AND FOR WEBER COUNTY
STATE OF UTAH

ADDENDUM 10

Utah Department of Health

Utah Public Health Laboratories
Bureau of Forensic Toxicology
46 North Medical Drive
Salt Lake City, Utah 84113-1105
Telephone: (801) 584-8400
Fax:(801) 584-8415

Lab Information	
Lab Case #:	**L2008-6406**
Sample #:	168564
Source:	**Blood**
Date Received:	09/16/2008
Date Completed:	09/29/2008
Subject Information	
Subject Name:	**PRICE, JED OZZIE**
Subject DoB:	04/28/1982
Agency Information	
Submitting Officer:	RYAN READ
Agency Case #:	**0832699**

AGENCY CODE: LE04A

WEBER COUNTY SHERIFF OFFICE
RECORDS DIVISION
721 W 12TH ST
OGDEN, UT 84404-5405

TOXICOLOGY FINAL REPORT

Test Run: **Alcohol by Headspace GC**

Ethanol Result: **Negative**

Test Run: **Cocaine Screen**

Cocaine Result: **Negative**

Test Run: **Methamphetamine Screen**

Methamphetamine Result: **Negative**

Test Run: **Morphine screen**

Morphine Result: **Negative**

Test Run: **THC by GC/MS**

THC Result: **Positive**

Tetrahydrocannabinol (THC) is the principal psychoactive constituent of marijuana. When smoked it is rapidly distributed to various tissues and disappears quickly from the blood. If found (possible in blood only), it indicates either recent use or chronic daily use of marijuana.

THCmtb Result: **Positive**

11-Nor-9-Carboxy-THC is the primary metabolite of tetrahydrocannabinol which is the principal psychoactive constituent of marijuana. It is an inactive metabolite, and may be detected in the urine for several days or weeks depending on the subjects frequency of use.

Analyzed by: Othman Jaber